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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 108/2004**

B.S.SHARMA

..... Plaintiff

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl,
Mr. P. Agarwal & Mr. V. Batta,
Advs.

Versus

RAVI KANT SHARMA AND ORS.

.... Defendants

Through: Mr. Rajesh Kumar, Adv.

AND

TEST.CAS. 3/2009

RAVI KANT SHARMA

..... Petitioner

Through: Mr. Rajesh Kumar, Adv.

Versus

STATE & OTHERS

..... Respondents

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl,
Mr. P. Agarwal & Mr. V. Batta,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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13.01.2017

1. This order is in continuation of the earlier order dated 10th January, 2017.
2. The counsel for Mr. B.S. Sharma and the counsel for Mr. Ravi Kant Sharma, Mrs. Mukesh Sharma, Mrs. Gulshan Kaushik & Mrs. Suman Gaur state that the parties have amicably resolved their disputes subject matter of both the proceedings and desire both the proceedings to be disposed of in terms thereof.
3. The counsel for Mr. B.S. Sharma states that though Mr. B.S. Sharma is not present in the Court but he has specific instructions from him.

4. The counsel for Mr. Ravi Kant Sharma and the sisters states that only Mr. Ravi Kant Sharma is present in Court but he has specific instructions from the sisters viz. Mrs. Mukesh Sharma, Mrs. Gulshan Kaushik & Mrs. Suman Gaur also in this regard.

5. The parties state i) that the Testamentary Case No.3/2009 be allowed and probate of the document dated 21st December, 1994 as the validly executed last Will of Sh. Dev Datta Sharma, son of Sh. Raghuwar Dayal Sharma, resident of J-92, Reserve Bank Enclave, Paschim Vihar, New Delhi be granted to Mr. Ravi Kant Sharma; ii) that Mr. Ravi Kant Sharma shall bear the stamp duty on the probate; iii) that Mr. Ravi Kant Sharma be exempted from furnishing the surety bond as a condition for issuance of probate; iv) that the partition suit be disposed of in view of the probate, declaring that Mr. B.S. Sharma and Mr. Ravi Kant Sharma have inherited the property in accordance with the Will of Mr. Dev Datta Sharma; and, v) declaring the clause in the said Will “No portion of the property will be sold or transferred to any outsider at any cost or circumstances” as null and void and not binding on Mr. B.S. Sharma and Mr. Ravi Kant Sharma but Mr. B.S. Sharma, if desirous of selling the portion of the property which has fallen to his share under the Will shall give the first right of purchase to Mr. Ravi Kant Sharma or his heirs.

6. Probate cannot be granted on admissions and consent. Reliance can be placed on *A.E.G. Carapiet Vs. A.Y. Derderian* AIR 1961 Cal. 359, *Sushila Bala Saha Vs. Saraswati Mondal* AIR 1991 Cal. 166, *Sanjay Suri Vs. State* AIR 2004 Delhi 9, *Krishan Lal Dilawari Vs. State* 210 (2014) DLT 440, *Indian Associates Vs. Shivendra Bahadur Singh* AIR 2003 Del 292 (DB).

7. I have perused the evidence led in the proceedings and on perusal of the evidence, I am satisfied that the document dated 21st December, 1994 has been proved in accordance with law as the validly executed last Will of the deceased Dev Datta Sharma.
8. In view of the aforesaid finding on merits, the compromise aforesaid arrived at between the parties is found to be lawful and is allowed.
9. The Testamentary Case No.3/2009 is allowed.
10. Probate of the document dated 21st December, 1994 as the validly executed last Will of the deceased Dev Datta Sharma son of Sh. Raghuwar Dayal Sharma resident of J-92, Reserve Bank Enclave, Paschim Vihar, New Delhi be issued to Mr. Ravi Kant Sharma on complying with the formalities, without however requiring him to furnish a surety for the administration bond to be executed by him.
11. CS(OS) No.108/2004 is disposed of by observing that in view of the Will dated 21st December, 1994 of Sh. Dev Datta Shrama, property No. J-92, Reserve Bank Enclave, Paschim Vihar, New Delhi of which partition was sought in the suit has been inherited by Mr. B.S. Sharma and Mr. Ravi Kant Sharma in accordance with the said Will and the sisters viz. Mrs. Mukesh Sharma, Mrs. Gulshan Kaushik & Mrs. Suman Gaur have no right, title or interest therein and by declaring the clause “No portion of the property will be sold or transferred to any outsider at any cost or circumstances” in the Will as null and void and not binding on Mr. B.S. Sharma and Mr. Ravi Kant Sharma and by binding Mr. B.S. Sharma & Mr. Ravi Kant Sharma to the compromise as herein above.

12. The parties to bear their own costs.

Decree sheet be prepared.

13. List Testamentary Case No.3/2009 before Joint Registrar on 6th February, 2017 for compliance of formalities for issuance of probate.

RAJIV SAHAI ENDLAW, J

JANUARY 13, 2017

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